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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,766	12/28/2000	Brian B. Egan	NTL-3.2.172/3666	8660
35437	7590	08/25/2006	EXAMINER	
MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO 666 THIRD AVENUE NEW YORK, NY 10017			HAN, CLEMENCE S	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/750,766	EGAN ET AL.
	Examiner	Art Unit
	Clemence Han	2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 May 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-6, 10-18 and 20-23 is/are rejected.
7) Claim(s) 7-9, 19 and 24 is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 17 is objected to because of the following informalities: The limitation “a packet loss measurement tool” in the last line should be “the packet loss measurement tool”. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claim 1-6, 10-18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kroll (US 6,700,895) in view of Welin (US 6,975,629).

Regarding to claim 1, 14 and 20, Kroll teaches a method of voice optimization in a packet switched network, comprising: initializing default parameters for end-point devices on a network with respect to jitter buffer size 210; measuring performance parameters of the network 212-280; and evaluating whether the measured performance parameters signify that a connection to the network is below a desired level of operation 194 and, if so, adjusting the default parameters for the end-point devices based on the evaluating 196. Kroll, however, does not teach initializing default parameters with respect to choice of preferred CODEC and number of voice samples per packet. Welin teaches initializing

default parameters with respect to choice of preferred CODEC and number of voice samples per packet (Column 18 Line 4-14). It would have been obvious to one skilled in the art to modify to initialize default parameters with respect to choice of preferred CODEC and number of voice samples per packet as taught by Welin in order to optimize the system in real time (Column 18 Line 20-25).

Regarding to claim 2, 18 and 23, Kroll teaches the adjusting includes performing functions that are selected from a group consisting of re-negotiating a CODEC connection, re-setting of parameters for the packet size and re-setting the jitter buffer 196.

Regarding to claim 3, 5, 11, 15 and 21, Kroll teaches the performance parameters being measured are selected from a group consisting of throughput, latency, packet loss, bandwidth, number of network hops to the end-point devices, round trip delay and any combination thereof 280.

Regarding to claim 4, 6, 16, 17 and 22, Kroll teaches the measuring is performed with at least one tool selected from a group consisting of a ping tool, a network trace tool and a packet loss measurement tool (Column 2 Line 36-39).

Regarding to claim 10, Kroll teaches measuring and evaluating existing performance parameters with respect to quality of connection 212-280, the initializing being based on the evaluating 196.

Regarding to claim 12, Kroll teaches evaluating the measured performance parameters with respect to quality of connection 212-280 and performing the adjusting as a result of the evaluating 196.

Regarding to claim 13, Kroll teaches the adjusting is carried out during transmission of media to the end-point devices (Column 6 Line 55-64).

Allowable Subject Matter

4. Claim 7-9, 19 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed on May 23, 2006 have been fully considered but they are not persuasive.

6. In response to applicant's argument that there is no suggestion to combine the references (page 7-8), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Welin recognizes the need for solution to packet lost and delayed (Column 1 Line 42-54) and teaches selecting coder suitably at run-time (Column 18 Line 7-8). Even though Kroll teaches adjusting the size of a jitter buffer, it would be obvious to one of ordinary skill in the art to adjust both the size of a jitter buffer and the suitable coder would optimize the system even further in changing real-time condition (Column 18 Line 24).

7. In response to page 9, the applicant argues that Welin does not teach the choice of number of voice samples per packet. Welin teaches selection of coder, therefore selection of the frame size of the coder (Column 18 Line 7-14). The frame size is directly linked to the number of voice samples per packet (see the instant Specification page 7 line 7-12). Therefore, Welin teaches the choice of number of voice samples per packet. The applicant, further, argues that even though Welin teaches the selection of coders at run time, Welin does not teach initializing default preferred codec. Welin teaches adapting the selection of coder at runtime and the step of selecting the initial coder would be obvious to one of ordinary skill in the art.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to the invention in general.

U.S. Patent 6,356,545 to Vargo et al.

U.S. Patent 6,980,569 to Beyda et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clemence Han whose telephone number is (571) 272-3158. The examiner can normally be reached on Monday-Thursday 7 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

C. H.

Clemence Han
Examiner
Art Unit 2616



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